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OFFICE OF PETITIONS

In re Application of

Nislow, et al.

Application No. 09/722,838

Filed: November 27, 2000

Attorney Docket No. 1039

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.181(a) to withdraw the holding of abandonment, filed November 4, 2002.

The petition under 37 CFR 1.181(a) to withdraw the holding of abandonment is granted.

This application was held abandoned on April 6, 2002, after it was believed that a proper response was not received to the *Ex Parte Quayle* action mailed February 5, 2002, which set a shortened statutory period for reply of two months from its mailing date. A Notice of Abandonment was mailed November 9, 2002.

Petitioner maintains that a proper response was filed via facsimile on March 5, 2002. As evidence of the same, petitioner provides a copy of the Auto-Reply Facsimile Transmission receipt whereby the USPTO acknowledged receiving the response on March 5, 2002.

Petitioner's argument has been considered and is persuasive. A review of the application file history did not reveal a response having been filed on March 5, 2002. Notwithstanding, the Auto-Reply Facsimile Transmission is akin to an Office date-stamped postcard which serves as *prima facie* evidence of receipt of the document in question by the USPTO. Based on the aforementioned, the holding of abandonment was improperly imposed as a proper response to the final Office action was received prior to the expiration of the period set for reply.

The application file is being forwarded to Technology Center 1600, GAU 1645 for further processing which will include withdrawal of the abandonment status of the application and entry of the response filed November 4, 2002.

Further inquiries regarding this decision may be directed to the undersigned at (571) 272-3222.

/Kenya A. McLaughlin/

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